UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,318	08/31/2001	Wayne I Knigge	5328	1343

7590 09/07/2005

John A. O'Toole
General Mills, Inc.
Number One General Mills Blvd.
PO Box 1113
Minneapolis, MN 55440

EXAMINER	
MADSEN, ROBERT A	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

T-D

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/945,318	**Applicant(s)** KNIGGE ET AL.	
	Examiner Robert Madsen	**Art Unit** 1761	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *none*.
   Claim(s) objected to: *none*.
   Claim(s) rejected: *1,4-17,21,22,24,27-29,32-35,37-39,41-43,45-57,59-65 and 77-79*.
   Claim(s) withdrawn from consideration: *none*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See attached Detailed Action.

DETAILED ACTION

1. For purposes of appeal, the proposed amendment(s) will be entered and the proposed rejection(s) detailed below will be included in the Examiner's Answer. To be complete, such rejection(s) must be addressed in any brief on appeal.

2. Upon entry of the amendment(s) for purposes of appeal:

- The rejection of claim 79under 35 U.S.C 112, second paragraph would be withdrawn.
- Claims 1,4-17,21,22,24,27-29,32-35,37-39,41-43,45-57,59-65,77-79 would be rejected for the reasons set forth in the final Office action mailed May 19, 2005.

Response to Arguments

3. Applicant's arguments filed August 19,2005 have been fully considered but they are not persuasive.

4. Applicant asserts that the Examiner has not established a prima facie case of obviousness because the bag taught by Beer is intended to hold non-frangible, free flowing products. Beer teaches "coffee(beans or ground), powdered drink mix, ready to eat breakfast cereal, lawn/garden chemicals, and the like". Applicant believes that one of ordinary skill in the art would not have been motivated to utilize the bag of Beer for ready to eat breakfast cereal that is a frangible puffed cereal because one of ordinary skill in the art would recognize that the ready to eat breakfast cereals disclosed by Beer are limited to hold non-frangible, free flowing products. In response to applicant's

argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, neither Beer nor any other evidence made of record would suggest that the "ready to eat breakfast cereal" disclosed by Beer is limited to any particular type of breakfast cereal, such as non-frangible cereals. The rejection is based on the facts that Beer teaches a mercantile package for ready to eat breakfast cereals that provides structural integrity two withstand mishandling during shipping and Thomas et al. provides motivation to select a particular ready to eat breakfast cereal for the mercantile package: a puffed cereal that offers the advantages of staying crispy in milk and is available in any desired shape.

5. Applicant contends that the recited bag is capable of being filled with approximately 20-60% more material. However, as stated in the Office Action mailed May 19,2005, this particular feature is a known characteristic of vacuum sealing food items in a bag and further depends on the amount of settling prior to vacuum sealing (e.g. 30% more French Fries were packaged by Maglecic et al. in a vacuum bag).

6. Applicant states that the Packaging Technology reference supports Applicant's assertion that it is a surprising result, which none of the references teach or suggest, that a fragile cereal can be packaged in a vacuum bag. While Packaging Technology

teaches vacuum may break soft or fragile items, it does not teach or suggest that those soft or fragile items include puffed cereal compositions. Furthermore, the references applied in the Office Action, contrary to Packaging Technology, actually teach "soft items" in vacuum bags, such as cigars by McCrosson and French fries by Maglecic et al. (See Paragraph 10, Page 5 of the Office Action mailed May 19,2005).

7. Applicant further asserts that the art of record does not recognize the problem solved by Applicant. The problems solved by Applicant include (1) reduction of hexanal in a puffed cereal package, (2) reduction in volume of a puffed cereal , and (3) enhanced structural integrity of a puffed cereal package to protect a frangible puffed cereal of a particular crush resistances. However, the art, taken as a whole, does recognize the general problems disclosed by Applicant (i.e. oxygen/light affects on packaged food products, volume required for packaged products, and the structural integrity of a package). First, the prior art teaches that vacuum packaging with a multilayer laminate film/foil structure solves the problem of exposing a packaged ready to eat breakfast cereal to the harmful effects of oxygen and light (i.e. such that less than 1ppm hexanal would be present): see Beer as cited in the Office Action of May 19,2005. Second, the prior art teaches that vacuum packaging solves the problem packaged food items occupying large volumes by reducing the volume required by 30%, depending on the extent to which the food items may be settled prior to drawing a vacuum: see Maglecic et al. and Ylvisaker. Third, the prior art teaches that vacuum packaging solves the problem of crushing packaged fragile/crushable items in shipping: see McCrosson in the Office Action of May 19, 2005. As to the particular breakfast

cereal with a crush resistance that one selects for the packaging of Beer, the prior art teaches a puffed cereal that offers advantages over other ready to eat cereals: staying crispy in milk and is available in any desired shape (Thompson), and the prior art recognizes that the crush resistance of any puffed cereal would depend on flour quality, water activity, density, and water content (Francis).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 8:00AM-4:30PM M-F.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761

RAM

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761